



December 13, 2001

Ms. Julie Reagan Watson  
Assistant General Counsel  
Texas Department of Human Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR2001-5809

Dear Ms. Watson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156040.

The Texas Department of Human Services (the "department") received a request for the "current inspection report" and "any and all documents related to" Kingwood Village Estates. You state that the requestor subsequently limited her request to documents related to the most current inspection. You claim that a portion of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the submitted information was the subject of a previous determination from this office. The term "previous determination" under section 552.301(a) of the Government Code means only one of two types of attorney general decisions. So long as the law, the facts, and the circumstances on which the ruling was based have not changed, the first type of previous determination exists where requested information is precisely the same information as was addressed in a prior attorney general ruling, the ruling is addressed to the same governmental body, and the ruling concludes that the information is or is not excepted from disclosure. The second type is an attorney general decision which may be relied upon so long as the elements of law, fact, and circumstances are met to support the previous decision's conclusion, the decision concludes that a specific, clearly delineated category of information is or is not excepted from disclosure, and the decision explicitly provides that the governmental body or type of governmental body from which the

information is requested, in response to future requests, is not required to seek a decision from the attorney general in order to withhold the information. Open Records Decision No. 673 (2001).

In Open Records Letter No. 2001-5348 (2001), in a determination of the second type, this office ruled that the department could rely on that ruling as a previous determination to withhold any requested reports, records, and working papers that were used or developed during HCSSA investigations conducted under section 142.009 of the Health and Safety Code. *See* Gov't Code § 552.301(a). Attachment B comprises information used or developed during an HCSSA investigation conducted under section 142.009 of the Health and Safety Code. Therefore, the department may rely on the previous determination in Open Records Letter No. 2001-5348 (2001) to withhold Attachment B in its entirety. Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when elements of law, fact, and circumstances have not changed, decision concludes specific, clearly delineated category of information is excepted, and governmental body is explicitly informed it need not seek a decision from this office to withhold information in response to future requests).

Attachment C consists of department forms that identify deficiencies found in a section 142.009 investigation. Health and Safety Code § 142.009(d)(5). We agree that the identifying information you have marked in Attachment C must be withheld pursuant to section 142.009(d)(5).<sup>1</sup>

You further contend that a portion of the information in Attachment C is made confidential under the Medical Practice Act, (the "MPA"), chapter 159 of the Occupations Code. Section 159.002 provides in pertinent part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002( b), (c). The MPA requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Thus, the MPA governs access to medical

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<sup>1</sup>You request a previous determination for this type of information, but we decline to issue such a previous determination at this time.

records. Open Records Decision No. 598 (1991). Moreover, information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code § 159.002(a), (b), (c); Open Records Decision No. 598 (1991). Based on our review of Attachment C and your arguments, we agree that a portion of the highlighted information in Attachment C is subject to the MPA. We have marked the information that may be released by the department only in accordance with the MPA.

In summary, the marked information in Attachment C that identifies an individual must be withheld pursuant to Health and Safety Code § 142.009(d)(5). Further, the information we have marked in Attachment C may be released by the department only in accordance with the MPA. The remaining information in Attachment C must be released. The department may rely on the previous determination in Open Records Letter No. 2001-5348 as it applies to the information in Attachment B.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/seg

Ref: ID# 156040

Enc. Submitted documents

c: Ms. Ginger Jenkins  
Observer & Sun Newspapers  
1129 Kingwood Drive  
Kingwood, Texas 77339  
(w/o enclosures)